

## COUNCIL MEETING

February 3, 2010

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, Historic County Building, 4396 Rice Street, Room 201, Lihu'e, Kaua'i, on Wednesday, October 7, 2009 at 9:50 a.m., after which the following members answered the call of the roll:

Honorable Dickie Chang  
Honorable Jay Furfaro  
Honorable Daryl W. Kaneshiro (present at 9:55 a.m.)  
Honorable Lani T. Kawahara  
Honorable Derek S.K. Kawakami  
Honorable Bill "Kaipo" Asing, Council Chair

EXCUSED: Honorable Tim Bynum

### APPROVAL OF AGENDA:

Mr. Furfaro moved for approval of the agenda as circulated, seconded by Mr. Chang, and unanimously carried.

### MINUTES of the following meetings of the Council:

Council Meeting of December 16, 2009  
Council Meeting of January 6, 2010

Mr. Furfaro moved for approval of the minutes as circulated, seconded by Ms. Kawahara, and unanimously carried.

### COMMUNICATIONS:

Chair Asing: Next item please.

Mr. Furfaro: Next item please.

PETER A. NAKAMURA, County Clerk: (clearing throat) I'm sor...I'm sorry Mr. Chair. Next items are matters...on page 1 of the council's agenda are matters for receipt, communications C 2010-21, C 2010-22, and C 2010-23.

C 2010-21 Communication (01/04/2010) from the Chief of the Building Division, Department of Public Works, transmitting for Council information, the Building Permit Information Reports for December 2009:

- (1) Building Permit Processing Report
- (2) Building Permit Estimated Value of Plans Summary
- (3) Building Permits Tracking Report
- (4) Building Permits Status

Mr. Furfaro moved to receive C 2010-21 for the record, seconded by Mr. Chang, and unanimously carried.

C 2010-22 Communication (01/07/2010) from the Purchasing Division, Department of Finance, transmitting for Council information Fiscal Year 2009–2010 Second Quarter Statements of Equipment Purchases, pursuant to Section 18 of the Operating Budget Ordinance B-2009-690:

(1) Statement of Equipment Purchases per Budget Ordinance B-2009-690

(2) Statement of Non-Budgeted Purchases via Grants and Others

Mr. Furfaro moved to received C 2010-22 for the record, seconded by Mr. Chang, and unanimously carried.

C 2010-23 Communication (01/08/2010) from Leila Fuller, Chairperson, Board of Ethics, requesting Council consideration for an amendment to Chapter 3, Article 1, Kaua'i County Code 1987, as amended, relating to the Code of Ethics: Mr. Furfaro moved to receive C 2010-23 for the record, seconded by Mr. Chang, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter's on page 2 of the council's agenda is communication for receipt, communication C 2010-24.

C 2010-24 Communication (01/14/2010) from the Director of Finance, transmitting for Council information, the Schedule of Fund Balances for the Fiscal Year Ended June 30, 2009, pursuant to County Charter Section 19.14: Mr. Furfaro moved to receive C 2010-24 for the record, seconded by Mr. Chang, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next communication C 2010-25, Mr. Chair, I believe there's a request to defer this matter.

C 2010-25 Communication (01/20/2010) from the County Auditor, requesting Council approval of a 3-year lease term with an option to extend for 962 square feet of office space for the relocation of the Office of the County Auditor.

Mr. Furfaro: Move to defer. I want to say something, though. I assume this deferral is based on the auditor's department temporarily operating out of conference room space right now, but the intent is to have the administration look for the appropriate office space, so move to defer.

Mr. Furfaro moved to defer C 2010-25, seconded by Ms. Kawahara, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matters are matters for receipt, communication C 2010-26, C 2010-27, and C 2010-28.

C 2010-26 Communication (01/25/2010) from the County Auditor, transmitting for Council consideration an amendment to Ordinance B-2009-690, relating to the Operating Budget of the County of Kaua'i for the Fiscal Year July 1, 2009 through June 30, 2010, to transfer \$16,444.00 from the line item entitled "Consultant Services" to a newly established line item entitled "Building Lease"

within the Office of the County Auditor to lease 962 square feet commercial space for the remainder of the 2009-2010 fiscal year: Mr. Chang moved to receive C 2010-26 for the record, seconded by Mr. Kawakami.

C 2010-27 Communication (01/22/2010) from the Director of Parks & Recreation, transmitting for Council consideration, a draft bill amending Chapter 19, Article 3, Sections 19-3.2 and 19-3.3, of the Kaua'i County Code 1987, relating to playing fees and regulation of play at the Wailua Golf Course: Mr. Chang moved to receive C 2010-27 for the record, seconded by Mr. Kawakami.

C 2010-28 Communication (01/22/2010) from the Director of Finance, requesting Council consideration of a resolution authorizing the creation of a Countywide "Recovery Zone" for the purpose of facilitating and complementing the County's 2010 General Obligation bond issue (Bill No. 2343): Mr. Chang moved to receive C 2010-28 for the record, seconded by Mr. Kawakami.

Chair Asing: Any discussion?

Mr. Furfaro: Yes, I just want to make some discussion on item 2010-28 to make sure that we understand the intent here is to receive with...at...at the opportunity to develop a recovery zone. This is potentially to give us a better tax position with our upcoming bond. And I do believe that the recovery zone identifies the entire County of Kaua'i which will deal with declaring our recovery needs in economic value, including housing, job opportunities and unemployment.

Chair Asing: Yes, thank you. Any further discussion? If not, all those in favor say aye.

The motion to receive items C 2010-26, C 2010-27, and C 2010-28 was then put, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matters are matters for approval. First matter for approval is communication C 2010-29.

C 2010-29 Communication (01/13/2010) from the Prosecuting Attorney, requesting Council approval to expend Office of the Prosecuting Attorney (OPA) Regular Salary Funds (Account # 001-0401-513.01-01) to supplement salaries for grant-funded attorneys: Mr. Furfaro moved to approve C 2010-29, seconded by Mr. Kawakami, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter for approval is communication C 2010-30.

C 2010-30 Communication (01/13/2010) from the Executive on Aging, requesting Council approval for the following:

- (1) to receive and expend contract funds of \$6,195.80 for the time period February 1, 2010 to June 30, 2010, from the University of Hawai'i, School of Social Work, to develop the Aging and Disability Resource Center (ADRC), and

(2) to indemnify the University of Hawai'i, School of Social Work.

Mr. Furfaro moved to approve C 2010-30, seconded by Mr. Chang, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: At the top of page 3, Mr. Chair, for approval is communication C 2010-31.

C 2010-31 Communication (01/15/2010) from the Director of Housing, requesting Council approval for the following:

(1) lowering the leasehold purchase price of Apartment No. 5, Apopo Hale located at 4914 Aliali Road, #5 (Unit 5, Por. of Lot 14, Por. Kapa'a Homesteads, 4<sup>th</sup> Series, Kapa'a, Kaua'i) from \$201,500.00 to \$129,000.00, which reflects the leasehold value of the property in today's market; and

(2) authorizing the County Clerk to sign legal documents related to the property acquisition.

Chair Asing: Can I have a motion to approve?

Mr. Chang moved to approve C 2010-31, seconded by Mr. Kaneshiro.

Chair Asing: Any discussion?

Mr. Furfaro: Yes, I just want to confirm that some kind of estimate or appraisal was done to get to these prices. You might...Mr. Clerk, would you know that?

Mr. Nakamura: Yes, it's my understanding that there was and the copy of the appraisal's on file.

Mr. Furfaro: Thank you very much.

Chair Asing: Thank you. Any further discussion? If not, all those in favor say aye.

The motion to approve C 2010-31 was then put, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter for approval is communication C 2010-32.

C 2010-32 Communication (01/20/2010) from the County Engineer, requesting Council approval to accept a donation of approximately 1,000 cubic yards of cold planed pavement material from Grace Pacific Corporation, estimated value \$22,100.00, to be used in various future Department of Public Works projects: Mr. Chang moved to approve C 2010-32 with a thank-you letter to follow, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Mr. Chair, if we could move communication C 2010-33 to the end of the agenda until after the executive session briefing.

Mr. Furfaro: So moved.

Chair Asing: We'll move this to the end of the agenda. Next item please.

Mr. Nakamura: Next matter is communication C 2010-34.

C 2010-34 Communication (01/28/2010) from Derek S. K. Kawakami, President, Hawai'i State Association of Counties (HSAC), requesting Council discussion and action on the following proposals that were approved by the HSAC Executive Committee on January 19, 2010:

- Approval to consolidate the proposed 2010 HSAC Legislative Package Bill (HB 2018 and SB 2059) with the Hawai'i Council of Mayors (HCOM) Legislative Package Bill (HB 850, HD1 and SB 2175) relating to having County representation on the Hawai'i State Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees.
- Approval to support the HCOM Legislative Package Bill (HB 849, HD1 and SB 2174) relating to having County representation on the State of Hawai'i Employees Retirement (ERS) Board of Trustees.
- Resolution to urge the Governor and State Legislature to Maintain the Counties' share of the Transient Accommodations Tax (TAT).

Chair Asing: Thank you. What I'd like to do is I'd like to turn this over to the...Councilmember Kawakami, who is the President of the Hawai'i State Association of Counties. So with that, Councilmember Kawakami.

Mr. Kawakami: Okay, thank you, Mr. Chair. And you know what, we have a sheet that was circulated, kind of explaining the timeline and basically, what happened was HSAC had a bill to add a representative from the counties to the EUTF board, that's a health and benefit trust fund board. And just for everybody's information, this...this trust...this trust board, the total contribution was \$551.7 million of which \$128.6 million were contributed by the counties. So we contributed \$128.6 million to this board, yet we have no representation. So any changes to the health benefits literally leaves the counties in the dark. What...what has happened is we had a bill, HCOM had a bill which was very similar. The biggest change is that instead of adding a representative as what HSAC's proposal was, it just substituted one of the governor's appointees to an appointee from HCOM. So the Hawai'i Council of Mayors would choose a county representative to sit on this board and represent the counties when these important decisions are made. The proposal at hand is...is a work in progress. It's...it's...the efforts between the mayors and the councils to work together, you know. And so the proposal is to come to a unified piece of legislation and the proposal, yeah, is that HCOM would select a representative and the confirmation would come from HSAC. So that vehicle would mean that the name would be floated to HSAC. HSAC would then...the Executive Board would approve it, of which that name would be sent to all the respective counties for approval and all counties would have to approve. So that's the gist of...of the first one.

The second one is very similar. HCOM has a bill and it's to add a representative to the State of Hawai'i Employees Retirement Board of Trustees, so it's the same scenario. We have no county representation and that...that process would be identical to the EUTF Board of Trustee appointment.

And finally, I'm asking for your support from HSAC's efforts to adopt a resolution to urge the governor and state legislature to maintain the counties' share of the Transient Accommodations Tax and I think that's pretty self-explanatory. So, if you guys have any questions, I'll be happy to attempt to answer them. If not, I think that this is pretty straightforward.

Chair Asing: Thank you. With that, Councilmember Furfaro.

Mr. Furfaro: Yes, I clearly understand the negotiations...

BC, Videographer: Check your mike.

Mr. Furfaro: I clearly understand the negotiations that have been going on and I wanted to thank you for representing us so well, Mr. Kawakami. I...I do believe, as I understand it now, the group of mayors will now look at identifying a particular candidate. The confirmation of that candidate will come from the counties' councils jointly through the committee that you are the president of.

Mr. Kawakami: Yes.

Mr. Furfaro: And I...so...so much appreciate that we're going to have that kind of influence. It's unfortunate we couldn't get to the point that we had our own without the mayors, but it is progress being made.

The other one, I wholeheartedly support this resolution urging the governor and the state legislators to maintain the counties' share of the TAT tax. I want to share with my colleagues, we need to make a statement as a body. I...I do not look favorably on individuals acting in the sense of going to the media and so forth and pointing fingers at certain legislators. That is totally ineffective. What is effective is that we jointly let the legislature know our need to keep our share of the Transient Accommodation Tax. And even if we don't succeed this year, with perhaps changes in the overall leadership at the governor's level, perhaps we can have someone who is more sympathetic to understanding the values of keeping these taxes in our coffers. It is...it is disturbing that certain influential and powerful legislators that were pointed out in a media piece may interpret those comments poorly and could jeopardize our long-term position. And here we have an opportunity with, some patience, to send our message jointly, rather than knowing whatever the outcome is, later we might have to go to them individually and ask for funding of other individual pro...projects. This gives us a very solid statement and I would encourage us all to support it.

Chair Asing: Thank you. Any further discussion?  
Council...Councilmember Kawahara.

Ms. Kawahara: Thank you, Council Chair.

Chair Asing: (cough) Excuse me.

Ms. Kawahara: Thank you, Council Chair. I just wanted to thank Councilmember Kawakami for his work on this. I think it addresses...the first two issues address really good points that the county had no representation on either of these boards, of which we contribute, as you said, a lot of money. So, I appreciate you taking that on and HSAC doing that.

And I also want to say that I'm in strong support of the resolution to maintain the TAT. Thank you.

Chair Asing: Thank you. Any further discussion?

Mr. Kaneshiro: I...if I may, Mr. Chair, I wanted to concur with our vice chair, you know, vice chair's comments is that even though the paper printed it in some manner, as a member of a council here, I want to say for the record that for us, we haven't taken a position as such and that what Mr. Furfaro has stated is true is that we will still work diligently to try to make sure that the legislature have us maintain or try to convince the legis...from not taking the TAT tax. But at the same point I think we should all do it with all seven members rather than each person try to make their own opinions and, you know, do statements to the paper expressing in some way how they felt. And I also would appreciate if...if he...if any one of those members was speaking for themselves, I would appreciate if the paper would so note so, rather than say, you know, he's a member of a council, so. Just to set the record straight, you know, I wanted to have that cleared that, you know, just because one of...or someone puts something to the editor, in no way that reflects all of our intention and way how we communicate to the legislature. Thank you with that Mr. Chair.

Chair Asing: Thank you, with that, I believe we have Mr. Mickens. The rules are suspended.

There being no objection, the rules were suspended.

GLENN MICKENS: Thank you, Kaipo, for the record Glenn Mickens. Just a question. Derek, I really appreciate your fighting for the people here on Kaua'i with your HSAC. Regarding the TAT tax, supposing that all the counties do, obviously, and I don't see any reason they wouldn't, vote to keep the TAT tax as much as Jay's pointed out we need it, desperately need it. Who makes the final decision on that? Can the...can the...can the governor override the...the counties' wishes to keep that tax or can that...or who...who makes...who makes that call?

Mr. Furfaro: Mr. Kawakami, may I answer that please?

Mr. Kawakami: Sure.

Mr. Furfaro: It is a legislative piece primarily, Glenn. The state legislature not only determines our share of the TAT, but they also determine of the dollars put in that fund, what actually goes to fund the Convention Center and so forth. And that is done by the legislative body. They determine that.

Mr. Mickens: The whole body.

Mr. Furfaro: The whole body.

Mr. Mickens: Okay.

Mr. Furfaro: And in that legislation, they determine it by what is our portion of the pot. So we first need to understand that currently we get 14.2% of the pot by the legislators saying that is our fair share.

Mr. Mickens: 14.2% is our share that we keep.

Mr. Furfaro: The legislature says that's how much of the pot we get.

Mr. Mickens: Okay.

Mr. Furfaro: ...after they pay the transi...the Convention Center and the HTA funding. What is left, they determine that that is our fair share. So it is possible by speaking as a body we could not lose the entire thing. They could introduce legislation that reduces our share down to 10%.

Mr. Mickens: So they can take the 14.2% if they so choose. The legislative body, they can go ahead and take that 14.2 from not just us but what...from the rest of the counties also?

Mr. Furfaro: The formula, and I could be wrong, is pretty much as such. After the two operating accounts I just spoke of, what is left, 44.5% goes to the City & County of Honolulu, I believe, and these are round numbers out of memory, 19% goes to Maui, 18% goes to the Big Island, and 14.2 comes to us. And I think they base it on the number of visitor units in their counties. That's what I think. But that allocation is determined by the legislature. So, by doing a joint resolution with all the counties, we are basically asking them to consider how very vital those funds are for us to maintain the visitor (inaudible).

Mr. Mickens: Sure.

Mr. Furfaro: Clearly the fact that parks, public beaches, recreational areas are operated by the counties, and we need that share because of, besides the public use, there is the visitor use. So, that is one approach. The formula can be changed by the legislature introducing that bill. Certainly the governor then has the ability to earmark in her package if she wants to even do that at all or...or suggest that the whole piece go away. But of course, the legislature also needs the majority vote to veto if the governor chooses to do something like that.

Mr. Mickens: And does she have the power then to be able to override the legislative part of it. If the leg...if she needs that money to balance the budget...

Mr. Furfaro: I will refer to the fact that that is in the state constitution of which I'm more familiar with the county charter. But I wanted to make sure you understood how we got there.

Mr. Mickens: Right, right.

Mr. Furfaro: And don't give up hope that if they take some, they could leave the rest for us based on a legislative formula.

Mr. Mickens: But as you said we do need though 14.2% to keep running our government here, right?



Mr. Furfaro: Well, that's our current share. But I want to make sure you clearly heard what I said.

Mr. Mickens: Yeah.

Mr. Furfaro: We need to look uniformed, uniformed. It doesn't help us when we portray aggressive and powerful legislators as doing something because they have that power. We needed to say that in a message, not only as a body for the Kaua'i County, but as all county councils. And I think that's what Mr. Kawakami has worked out for us in this resolution. Whatever the outcome, we want to be on understanding terms...understanding terms with the legislature because we used to, before the TAT tax and I think Mr. Asing knows this better than I, we used to get a county subsidy solely at the discretion of the legislature. So we need to make sure they know it's an important issue and we want to work together as a whole body.

Mr. Mickens: Is that subsidy part of the TAT tax?

Mr. Furfaro: That was...no, no. Well, that's how they see it. The subsidy went away from the state once we began taking...

Mr. Mickens: I see.

Mr. Furfaro: ...our portion of the TAT. But before the TAT, we used to get an allocation to the counties. I hope I've answered your question.

Mr. Mickens: Yes, thank you very much, Jay. And again, thank you, Derek. Hope you can...keep voicing your opinion there so we can get that TAT tax.

Chair Asing: Thank you, with that, Councilmember Kaneshiro.

Mr. Kaneshiro: Glenn, I...I also wanted to add that recently, you know, the governor has changed her position where her current...well previous budget sessions she had supported the counties keeping the TAT. But if you look at the situation they're in right now with a \$1.4 billion deficit, she has changed her position also. And I know, you know, she originally came from Maui County as a mayor and she probably realized how hard it is for the other counties to be able to balance their budget without that moneys there, but at the same time she took a strong position also that they want to raid the TAT, so.

Mr. Mickens: And that was basically my point too asking whether she can, in fact, override the legislature and decide she wants to take that point fourteen (.14) from Kaua'i and all the rest of them. She can wa...can she do that? Does she have the power?

Mr. Kaneshiro: Well, I...I believe she can, but she's taken a different position now where she's saying we need to take it too. The governor has made that, you know, statement, so...

Mr. Mickens: Okay.

Mr. Kaneshiro: ...at the same time, but I think it's a good dialogue and it's important for people like you and everyone here that hears this that we need to contact our legislators and, you know, even the governor too and let them know how important the TAT is to us.

Mr. Mickens: By calling Gary and calling...

Mr. Kaneshiro: Absolutely, absolutely.

Mr. Mickens: Okay.

Chair Asing: Okay, with that, Councilmember Furfaro.

Mr. Furfaro: Glenn, I...I'm...I'm going to take the portion of the allocation...I'm going to xerox that page for you. I was off by maybe half a point or so forth but that's the general allocation.

Mr. Mickens: That's okay.

Mr. Furfaro: And...and the other thing I want to share with you is, you know, we have our legislative team. I quite frankly think that, you know, Senator Hooser in the Senate and so forth, I mean they were looking at our portion of the TAT last year.

Mr. Mickens: Right.

Mr. Furfaro: Our legislative group and Senator Hooser's made it very clear he doesn't favor taking it. But we have, you know, we have those four that last year suc...successfully kind of headed this off, you know. And I...I didn't want to go without recognizing last year's efforts by our legislative team and in particular...

Mr. Mickens: But then I do presume Honolulu has a greater voice than Kaua'i, right? So, if they...they take it away, they still control more than we do, right?

Mr. Furfaro: I...I...I think that's true, but what we want to make sure is we have a resolution that sends a message to our legislative team. That's...I got to tell you Senator Hooser's been very successful in this last year, but it tells our team, here's our position, we want to work with you and you then have to work for tho...with those other what's so-called influential teams.

Mr. Mickens: Sure.

Mr. Furfaro: We want to make their job reasonable and objective too...

Mr. Mickens: Right.

Mr. Furfaro: ...by doing this legislation.

Mr. Mickens: Right.

Mr. Furfaro: Thank you.

Mr. Mickens: Thank you, Daryl.

Chair Asing: Thank you. The meeting is called back to order. Any further discussion on this item? Councilmember Kawakami.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Mr. Kawakami: I just want to add too, that, you know, I stated before when we came with the legislative package that we're really getting back to our grassroots as far as HSAC's mission and it's to be an effective liaison between state and county governments and there's many avenues we can take. Some people ask, you know, why we're not introducing more bills. That's not the approach we wanted to take at this time. We wanted to remain focused, like the laser beam, on the issues at hand and to be a resource for our state representatives and senators. And you know, everything that went around the table is all...is all very true. You know the people of Kaua'i, the people of the State of Hawai'i, they don't want the finger pointing, yeah. They don't want the blame game. They want...they want solutions. They want problem solving and I think the worst thing we can do is jeopardize that line of communication at this time. I mean our line of communication between the state and counties are pretty open right now. You know, when things come up that affect the counties for the most part, they seek some data from us. How is it going to affect the counties? And that's truly what we envisioned as HSAC's role, is to be that liaison, to be that source of information, to be seen as a resource and I'm just asking that we, you know, continue to foster that open communication with them. We realize they're in a difficult position. I think Vice Chair Furfaro brings up an excellent point, you know. All our Kaua'i delegation with Representative Morita, Representative Sagum, Representative Tokioka and Senator Hooser all fought hard for Kaua'i County and I really want to say that Representative Tokioka really...he took this issue last legislative session and he made it a priority and he fought hard to preserve that for the counties in spite of the fact that there are tough...they're faced with some of the toughest decisions that they're probably going to make in their life while they battle this economic downturn. So I just want to give a big mahalo...a big mahalo to all of you because you guys, you know, all sent in testimony. You guys all had your voices heard and so, thank you very much and we look forward to the continued support as we move forward. Mahalo.

Chair Asing: Thank you, with that, Councilmember Furfaro.

Mr. Furfaro: And Mr. Chair, I just personally also and I think all the members here want to thank Councilman Kawakami for his fine work in his first year, which...with HSAC, and I just want to say thank you very much.

Chair Asing: Thank you. Councilmember Chang.

Mr. Chang: Thank you, Chair. You know I...I appreciate listening to this dialogue and I want to start it and end it by thanking our president of our HSAC, Kaua'i's own, our fellow Councilmember Kawakami. I don't really realize if people know how hard he works and, you know, goes back and forth to Honolulu. But interesting names that popped up, we talked a little bit about Representative Tokioka and Senator Hooser and Councilmember Kaneshiro mentioned that of course our Governor Lingle used to be the mayor of Maui, but I think if we go a little further, if I'm not mistaken, she was also a councilmember of Moloka'i. And there are a lot of people in the state legislature right now that

understands the counties and the plight of the counties. But one of the things that I hope the general public realizes is that many of us on this table here have bona fide, true personal great, great hanabutta day relationships with many of the members of the legislature and our senate and they're going under so much pressure right now that to me it's very rewarding when you would go up and just shake hands and hug somebody and hold their hands and ask about their families and not really be full on aggressive because they know what we're going through, they know what we're asking for and I think as our president here with HSAC has said, together unified with all of our counties, this is the right way to go at this, by being together and by being as one because I believe that the state knows what our plight is if we lose the TAT tax and of course we won't know that for several months, but we still have to aggressively hope that we can keep, you know, certainly a portion if not all. But we'll continue to work on that together as one...as one voice and, you know, again, I do want to end it because you know for the first year for Councilmember Kawakami to be the president of HSAC, I have to tell you, on a personal note, I know that he is working diligently and I want to, you know, say this in public, Councilmember Kawakami, you are working very, very hard and you make Kaua'i real proud because whenever we talk to our legislators, they pass it down to say that you know you're giving your best effort for not only our council floor here, but certainly for the members of Kaua'i and Ni'ihau, so thank you very much, Councilmember Kawakami.

Chair Asing: Thank you, with that, Councilmember Kawakami.

Mr. Kawakami: Well, thank you, but all the mahalos are a little premature because we gotta wait and see if these things pass and that we save our TAT and if we don't, then you know what? I might be fired from my job. But...so you guys putting the pressure on, but you know it would behoove me to also leave out the HCOM, yeah, the council of mayors. They've been working with HSAC and we really appreciate it because, you know, sometimes, you know, it would be easy to have friction, but that's not the case with HCOM. I think we both recognize the need to come to compromise and they've been working diligently and, you know, the whole staff on HCOM, our mayor Bernard Carvalho, he is...he's up there working his butt off also, so, you know, as well as all of you guys, so thank you.

Chair Asing: Thank you. Any further discussion. If not, I just want to add a few things. I concur with all of the things that were said this morning regarding this issue. I...I'd also like to say that I don't think that many in the public realize also that besides trying to get and do this with a team effort, which we are trying to do and have been doing all along, there are many members of this council that have sacrificed themselves going over personally at their own expense to meet and talk to legislators. I'm talking about key legislators to try to convince them to do whatever they can to preserve the TAT tax and I'm not sure that the public knows that, you know, many members of this council have gone over there on their personal time as well as time for council to meet with key members of the legislature to try to persuade them to retain the TAT tax for us, yeah. It's not going to be easy. It's a very, very difficult, difficult situation. Knowing the condition of the state right now, the decision making is completely with the legislature. It's in their hands. And whatever they say is what is going to happen and we need to work together with them and just explain our plight and the problems that we face and we need help too. So with that, thank you very much. I don't believe we have a motion. Am I correct?

Mr. Nakamura: We don't have a motion yet, Mr. Chair.

Chair Asing: Can I have a motion to approve.

Mr. Nakamura: Mr. Chair, just for the record, I wonder if the council could take these matters item by item for approval?

Chair Asing: Why don't we take the first item and we'll do the three items, so the first item, please. Peter, why don't you read the first item and then we'll have the motion and the approval process.

Mr. Nakamura: The first item from the Hawai'i State Association of Counties is approval to consolidate proposed 2010 Hawai'i State Association of Counties Legislative Package Bill (HB 2018 and SB 2059) with the Hawai'i Council of Mayors Legislative Package Bill (HB 850, HD1 and SB 2175) relating to having county representation on the Hawai'i State Employee Union Health Benefits Trust Fund Board of Trustees. This would be a proposal to consolidate and support joint Hawai'i State Association of Counties and Hawai'i Council of Mayors legislation.

- Approval to consolidate the proposed 2010 HSAC Legislative Package Bill (HB 2018 and SB 2059) with the Hawai'i Council of Mayors (HCOM) Legislative Package Bill (HB 850, HD1 and SB 2175) relating to having County representation on the Hawai'i State Employer-Union health Benefits Trust Fund (EUTF) Board of Trustees: Mr. Furfaro moved for approval of this item, seconded by Ms. Kawahara, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter in the Hawai'i State Association of Counties package for approval is a request to approve support of the Hawai'i Council of Mayors Legislative Package Bill (HB 849, HD1 and SB 2174) relating to having County representation on the State of Hawai'i Employees Retirement System (ERS) Board of Trustees. This would be a proposal to add this issue to the HSAC, Hawai'i State Association of Counties package and to support joint Hawai'i State Association of Counties and Hawai'i Council of Mayors legislation.

- Approval to support the HCOM Legislative Package Bill (HB 849, HD1 and SB 2174) relating to having County representation on the State of Hawai'i Employees Retirement (ERS) Board of Trustees: Mr. Furfaro moved to approve this item, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Next item.

Mr. Nakamura: The last matter from the Hawai'i State Association of Counties is a request to endorse the resolution to urge the governor and the state legislature to maintain the counties' share of the transient accommodation tax.

- Resolution to urge the Governor and State Legislature to Maintain the Counties' share of the Transient Accommodations Tax (TAT): Mr. Chang moved to approve this item, seconded by Mr. Furfaro, and unanimously carried.

Chair Asing: With that, we are through with communication 2010-34. Can we have the next item, please?

Mr. Nakamura: Next item is a claim. This is communication 2010-35, which is a claim filed against the county by Alex Sagucio.

CLAIMS:

C 2010-35 Communication (01/20/2010) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Alex Sagucio for his son's loss of personal property, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Furfaro moved to refer C 2010-35 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matters for approval are committee reports. From your committee on Planning, committee report CR-PL 2010-05.

COMMITTEE REPORTS:

PLANNING COMMITTEE REPORT:

A report (No. CR-PL 2010-05) submitted by the Planning Committee, recommending that the following be received for the record:

"PL 2010-1 Communication (12/30/2009) from Councilmember Tim Bynum, requesting time for a presentation by Keith Nitta on Bill No. 2339, relating to Development Standards in the Open District,"

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Furfaro, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: From your committee on Public Works/Elderly Affairs, committee report CR-PWE 2010-02 and CR-PWE 2010-03.

PUBLIC WORKS/ELDERLY AFFAIRS COMMITTEE REPORTS:

A report (No. CR-PWE 2010-02) submitted by the Public Works/Elderly Affairs Committee, recommending that the following be received for the record:

"PWE 2010-1 Communication (01/21/2010) from Tim Bynum, Committee Chair, requesting agenda time for "Zero Waste Kaua'i" to provide a presentation regarding the Integrated Solid Waste Management Plan Update (Resolution 2009-71),"

Mr. Chang moved for approval of the report, seconded by Mr. Kaneshiro, and unanimously carried.

A report (No. CR-PWE 2010-03) submitted by the Public Works/Elderly Affairs Committee, recommending that the following be approved as amended on second and final reading:

“Resolution No. 2009-71, RESOLUTION ADOPTING THE  
INTEGRATED SOLID WASTE MANAGEMENT PLAN UPDATE FOR THE  
COUNTY OF KAUAI,”

Mr. Chang moved for approval of the report, seconded by Mr. Kaneshiro, and unanimously carried. (*See later for Resolution No. 2009-71, Draft 1*)

Chair Asing:                      Next item please.

Mr. Nakamura:                      Next matter for approval are resolutions. First resolution is Resolution No. 2009-71, Draft 1.

RESOLUTIONS:

Resolution No. 2009-71, Draft 1, RESOLUTION ADOPTING THE INTEGRATED SOLID WASTE MANAGEMENT PLAN UPDATE FOR THE COUNTY OF KAUAI: Mr. Furfaro moved for adoption of Resolution No. 2009-71, Draft 1, seconded by Ms. Kawahara.

Chair Asing:                      I believe we have an...let's have Glenn up first. I'd like to suspend the rules, Glenn.

There being no objection, the rules were suspended.

GLENN MICKENS:      Thank you again, Kaipo, for the record Glenn Mickens. You have a copy of my testimony, it's not long. Let me read it please for the record. I basically support Reso. 2009-71 and approve of it even more with Tim and Lani's floor amendment, which I like very much. I completely agree with this addition to the reso that states, "Prior to encumbering any additional funds or implementing any actions relating to waste-to-energy, the full extent of the council's diversion potential shall be developed and assessed." And in my opinion I still can't understand why this administration and this council does not embrace the wise words and direction that John Harder wants to go to solve our solid waste problems. In fact, why doesn't someone in authority find the 1994 integrated solid waste plan that John helped to structure, maybe upgrade it and put it into action. I talked to John a little bit about it and he said, I don't know, he didn't know what happened to it. It was on a shelf someplace probably gathering dust. Again, I'm not trying to criticize the R.W. Beck plan as it had some good material in it, but from my observations, they seem to be leaning heavily on the waste-to-energy concept, whereas the more recent view is to use the three Rs: reduce, recycle and reuse, which John advocates. As John said, other municipalities such as Maui and San Francisco are diverting 60% and 70% of their waste, whereas we are asking to go to 35% in five years. I believe that we are diverting about—Jay you can correct me—25% now, so increasing this amount by about 10% in five years, for me, would be unacceptable. In summary, I can only say that this county is extremely fortunate to have a true solid waste person like John Harder volunteering his expertise to alleviate our waste problem. Why not hire this man and really rely on his guidance? Any questions? I'm not...you know, I'm not a...

Chair Asing:                      Thank you.

Mr. Mickens:                      I'm not a spokesperson for...for John Harder. I'm just (inaudible)...it's just my...I know I sound like...

Mr. Furfaro: When we...when you say why don't we hire John Harder...

Mr. Mickens: Yeah.

Mr. Furfaro: ...and solve it, and then the next voice you say you're not an advocate?

Mr. Mickens: No, no, no, I mean I'm not his press agent or something. I just...I only know him from a distance and I've seen what he's done. I saw him under a...before under JoAnn's administration as a true solid waste expert.

Mr. Kaneshiro: After the hurricane.

Mr. Mickens: After the hurricane, yeah, whatever. But you know, I know that he cleaned up Saipan and I know he's been on Maui and he's got some...well, you heard his...I don't have to go and he wanted...his testimony was here before this council and I think he has the expertise to really help us bury ourselves out of this hole. But to say that, you know, the plan now going from what 25% to 35% in five years? I...I just think that's ludicrous.

Chair Asing: Thank you.

Mr. Mickens: Thank you very much.

Mr. Chang: I've got a question for him.

Chair Asing: Yeah, go ahead.

Mr. Chang: Thank you. Glenn, in your testimony it says that John said that other municipalities such as Maui and San Francisco, so let's just say Maui, are diverting 60% to 70% of their waste. Is that...are you making reference that they're...

Mr. Mickens: Just to his testimony. I thought I heard him say that Maui was up to 60% and San Francisco is now up to 70% of diverting their waste.

Mr. Chang: As we speak?

Mr. Mickens: Yeah, well I thought that's what I heard. I could be wrong, but I thought I heard John Harder say that, yeah, and I think somebody on the council was asking, what was the time span that like Maui is up to 60%. I...I didn't hear that.

Mr. Furfaro: Because there wasn't an answer.

Chair Asing: Go ahead, Councilmember Furfaro.

Mr. Furfaro: Yes. Oh yes, I'm sorry, my apologies.

Mr. Chang: I just...I just wanted to...because our...if I'm not mistaken, our consultant had...because I remember asking how do...how do they do 60% to 70% and we're at this conservative 35%.



Mr. Mickens: Right.

Mr. Chang: And he...he seriously doubted that they would get up to 60% to 70%. So, I'm just...my question, I guess, was I was asking to you, you're not saying that as we speak Maui is diverting at least 60% right now.

Mr. Mickens: No, I thought, Dickie, I thought that's what I heard John make that statement that they were diverting 60%, maybe, but you know, if I'm wrong, I'm wrong. But what you're saying then that Maui is not diverting 60% at this stage of the game.

Mr. Chang: As we speak I don't believe so.

Mr. Mickens: Okay.

Mr. Chang: I don't even think that they're anywhere close to 50%, but again I could be wrong and we can find out.

Mr. Mickens: Right, right.

Mr. Chang: Thank you.

Chair Asing: Councilmember Furfaro.

Mr. Furfaro: I think you realize that someone from the council asked the question, I think you know it was me, okay. I compared the two plans. Here are the differences. There is a thought out there that the Maui plan is 70%. That is not true. The Maui plan is 60%.

Mr. Mickens: John said that, Jay. He did...he corrected...somebody said 70, he said I said, he said 60.

Mr. Furfaro: Let me...let me...let me share that again because you're saying it again here perhaps it gets confusing for people. The Maui plan is not 70% is how I directed it at John and John agreed with me. That question came from me. I compared the plans. I reviewed it with solid waste. Their plan is 60.

Mr. Mickens: Okay.

Mr. Furfaro: Their plan has no time agenda tied to that 60. He concurred with me. It doesn't say 60 in five years, 60 in ten years, it just says the goal. I suggested that we might do a separate resolution that identifies our plan as maybe needing to go to 50, put some more reach into it. But our plan is about complying to the state requirement to give a five-year plan updating the old plan, okay, updating. This is not a new plan. The state requires to update our plan every five years. I agree that maybe we should be looking, in the future with more discussion with public works, about being more aggressive and 50% for ten years or something of that nature. But the first thing I wanted to correct was the Maui plan was 60% and it's not date specific. It is not date specific.

The other particular piece, I think and John agreed, is we talked about our curbside recycling and so forth, and they also say they are not looking at a pilot program, they want to see us get started. Our problem is we've only funded for a MRF, we don't have one. So, we needed to maybe do a comparison if we collected recyclables and we had to send them to the mainland.

The other part of our plan is there is high emphasis on diversion and recycling, but waste-to-energy comes in as a third option. Do we want to close that door now? Tim's resolution said close it for five years. I don't think this council has the authority, quite frankly, to pass resolutions for more than the year that this body is in office. We can't direct a policy that two elections from now a new council might see differently. I don't know if that's a wise approach. Therefore, I thought in terms of amending that to say we should consider, that was Dickie's and Tim's amendment.

The other thing is we need to closely watch the Energy Sustainability Plan we have and as we talk, that plan is changing because of public input. Fifty cents on fuel is probably very unrealistic, but let's let those individuals that are participating in that say to us what is the real reach. Eight to nine percent subsidy for the bus...not enough, you know, so we got to massage that, especially if we're charging a subsidy. It said 40...45 megawatts of water, that's what the plan said from hydro. That's a...unobtainable. It's probably more like 22. So why would we want to start closing doors on other options no matter how unpopular they are.

Now as to hiring John, he can apply. That's not this council's...he can apply. He could solicit support letters of recommendation, not necessarily appropriate, but he could. But that's an administrative decision and I just want to clear that with you, Glenn. That...that's not our council's decision.

Mr. Mickens: What...what diversion rate are we at now? Are we at 25%? Is that what we're diverting now?

Mr. Furfaro: I...I think we're somewhere in-between there, but I think John is correct. The biggest part that we can get to quicker deals with how we handle green waste.

Mr. Mickens: And you...I presume you wouldn't be satisfied going from 25 that we are now, in five years to 35.

Mr. Furfaro: Mr. Mickens, did you hear what I said and I said it that day too? I would maybe look at maybe a resolution that takes us to at least 50...

Mr. Mickens: Okay.

Mr. Furfaro: ...as a policy statement.

Mr. Mickens: Okay.

Mr. Furfaro: But we're talking about the plan not being the final item, but the delivery of the package is required of us by the state.

Mr. Mickens: But that's what R.W. Beck's recommendation...

Mr. Furfaro: Yes, and I also will correct you, you said R.W. Beck was \$600,000. It's not, it was \$300,000, you know.

Mr. Mickens: For this particular plan.

Mr. Furfaro: Yes.

Mr. Mickens: But not before. We gave them seven years ago...

Mr. Furfaro: I understand, but...

Mr. Mickens: ...another \$300,000 and they (inaudible) after that.

Mr. Furfaro: Mr. Mickens, let's talk about apples and oranges at another discussion. We are required to update the plan. The old plan cost us \$300,000.

Mr. Mickens: Right.

Mr. Furfaro: This update, which is mandated to us, right?

Mr. Mickens: Yes.

Mr. Furfaro: Now, I don't want to disagree with you. I think Mr. Harder is a very talented guy. I think waste...Zero Waste has a lot to offer, but that decision needs to go through to the administration. Our goal here is to say here's the plan as they laid it out. It is an update, but it is not, as I was talking about the Energy Sustainability piece, it's not absolute right now.

Mr. Mickens: Right.

Mr. Furfaro: It...it's got to be tweaked. I agree with that. But if our hydro statement is too high, well, that's got to be tweaked, you know. If our diversion number is too low, that's got to be tweaked. But we can do that by making a policy statement for each council. So, I'm not disagreeing with you, but I'm trying not to close all options. This is a big issue.

Chair Asing: Thank you.

Mr. Mickens: Yeah, well, I'm...I agree. I think you're right. I don't think any option should be closed. I just thought that R.W. Beck was more on the waste-to-energy burning process than the current attitude happens to be.

Chair Asing: Thank...thank you, Glenn.

Mr. Mickens: Then, okay, thank you.

Mr. Furfaro: I hope I clarified your...

Mr. Mickens: Yes.

Mr. Furfaro: ...items.

Chair Asing: Is there anyone else who wants to talk on this item? If not, I'd like to call the meeting back to order. We have a motion to approve. I believe we have an amendment.

There being no one else wishing to speak on this item, the meeting was called back to order, and proceeded as follows:

Mr. Kaneshiro: Yes, Mr. Chair, thank you for the opportunity. I do have a floor amendment. As noted on the record, I wasn't here when the current resolution was passed. I was out-of-state, we were doing county business and now I would like to introduce my amendment and basically, it's the floor amendment that has been circulated. So at this time I would like to introduce an amendment and have a second on it.

Chair Asing: Thank you, can I have a second to the amendment.

Mr. Chang: Second to...for the purpose of discussion?

Chair Asing: Yes.

Mr. Chang: I second the motion.

Mr. Kaneshiro moved to amend Resolution 2009-71, as shown in the Floor Amendment attached hereto (Attachment No. 1), seconded by Mr. Chang.

Chair Asing: Thank you.

Mr. Kaneshiro: Okay, with that, basically my amendment specifically states that when we talk about waste-to-energy I did not want the possibility of leaving the options not open. As Mr. Mickens just stated before he left, we need to have the options, we need to look at options. And basically my amendment allows this to happen with waste-to-energy. It specifically states that "Be it further resolved, that prior to implementing programs relating to waste-to-energy, the County's diversion potential or impact to the landfill capacity should be reevaluated." So, basically, it leaves the option open and I believe, you know, we need to do that as...and I can tell you again, Mr. Mickens made a statement agreeing that we need to have options open and you know, nobody knows what's going to happen 6 years from now. Nobody knows what's going to happen 12 years from now. There may be some, you know, really innovative way where the cost of changing or doing waste-to-energy is not as high as what was shown to be...as what the report shows to be. You know, there may be many other circumstances that could occur. We could be hit with another hurricane. I mean, we don't want that to happen and then all of a sudden all of our recycling efforts we've been doing and we're hit with non-recyclable items. Are we not looking at something like this? Are we not looking to reduce the diversion efforts to the landfill? I think, you know, my amendment is not a very...if you look at it, it doesn't...it gives the opportunity...it gives us the opportunity to continue to look for options and I believe that...I read the amendment that was introduced prior to me introducing this amendment and if you read that amendment closely, basically it says that prior to encumbering any additional funds or implementing any actions relating to waste-to-energy, the full extent of the County's diversion potential should be assessed. What is the full extent? I don't see an answer to that, so I think my amendment is a good amendment that would leave those options open for the people of Kaua'i.

Chair Asing: Thank you, any further discussion?  
Councilmember Chang.

Mr. Chang: Thank you. Councilmember Kaneshiro, for the benefit of those that are in the chambers and the viewing audience, can you once again slowly read your...your amendment, please.

Mr. Kaneshiro: Absolutely, Mr. Chang. My amendment specifically states that "Be it further resolved that prior to implementing programs relating to waste-to-energy, the County's diversion potential or impact to the landfill capacity should be reevaluated."

Mr. Chang: Thank you.

Chair Asing: Thank you, any further discussion?  
Councilmember Kawahara.

Ms. Kawahara: Thank you, Chair Asing. Councilmember Kaneshiro, I was wondering if you could tell me what the difference was between assessed and reevaluated and why you changed that...why you're proposing to change that.

Mr. Kaneshiro: Why I think because...you could use assessed, but I felt that reevaluated would be a good way to look at whether our landfill capacity or how big of an impact it is. Whether assessed or reevaluated is an issue, I have no problem with changing back to assessed if need be. I mean, it...it...in particular, you know...I have no problem with either way.

Ms. Kawahara: Oh, okay, just curious, and I'm not done. The other question I have is because you're taking out the encumbering any additional funds...for what reason...and...because you put programs in instead? Is that why?

Mr. Kaneshiro: I think I stated my position that in case we get hit with something that we never know what may happen, this here, when you pass a resolution like this, now regardless if, you know, the intent is to look at other options, it prohibits the administration or the council for looking and evaluating other options or even putting money or additional funds if there are other options that need to be.

Mr. Nakamura: I...I'm sorry, Council Chair. I wonder if we could ask...if we could take a short recess. We...we just have a...we have to replace a...

Chair Asing: No problem.

Mr. Nakamura: Yeah, and we can take the...the caption break...

Chair Asing: We'll take the caption break now, thank you.

There being no objection, the Chair recessed the meeting at 10:46 a.m. The meeting reconvened at 11:04 a.m., and proceeded as follows:

Chair Asing: The meeting is now called back to order. We have an amendment on the floor. Is there any further discussion? Yes, Councilmember Furfaro.

Mr. Furfaro: Yes, as I mentioned earlier, you know, I...I...I'm close to the energy sustainability piece that we're working out in committee and I think as they in Mr. Costa's office got feedback, you know, it certainly was to identify the need to evaluate, you know, a lot of those...those numbers, especially when it came to production. You know, I think that plan said 12...12 megawatts was coming from biomass, 40...42 coming from hydroelectric, 18 potentially from photovoltaic. It didn't include wind, although we perhaps will have something on

the council agenda that talks about wind in the agricultural areas, and it did not touch on waste-to-energy. That's not...those wind and waste-to-energy is not in those...but it is an ongoing development and these things are constantly being reevaluated. And I think the feedback that they got from the community indicated that, you know, hydro might be too high, photovoltaic with their recent announcement may be too low, but it is a constant evaluation, and so I actually like the choice of the words that are in Mr. Kaneshiro's amendment and I also like using the terms on programs. What I just mentioned with, you know, biomass and hydro and...you know, they all have their...their issues. I mean, obviously hydro has issues that deal with fish and snails and wind has its issues with wildlife, you know fowls, birds under...with...under federal regulations. So, I like this. You know, I don't think we're at a point and that's why I changed the shall to should last time around because I think, you know, there's a constant reevaluation here to come out with the best item. So, I kind of like the choice of the words that you put in your amendment, Mr. Kaneshiro.

Mr. Kaneshiro: Thank you.

Ms. Kawahara: You know what mister...

Chair Asing: Any further discussion?

Ms. Kawahara: Yeah, I didn't get to finish before we went to that thing.

Chair Asing: Go ahead.

Mr. Furfaro: Oh, I'm sorry, let me extend you an apology.

Ms. Kawahara: No, that's okay. No, it wasn't...it's not your fault.

Mr. Furfaro: I...we came back from recess and I raised my hand. I'm sorry.

Ms. Kawahara: Yeah, I know, thank you, thank you. Just a...just...I wanted to ask, so we're taking out any terminology relating to additional funds. Is that right? For using to...as a purse string.

Mr. Kaneshiro: Are...are you asking me a question or you're making a statement?

Ms. Kawahara: I guess I should address it to the chair and ask you if I can talk to Mr. Kaneshiro.

Mr. Kaneshiro: No, no, I'm just saying, is that a question?

Chair Asing: You can do whatever you want to do.

Ms. Kawahara: Yeah, so what was the importance to you for...for having that taken out specifically because obviously it was important to you to remove it and change it instead to programs.

Mr. Kaneshiro: Yeah, I don't think we should put it to a point where that no additional funds should even go to, you know, these areas if need be. I mean, what is the purpose of that? Why...can you explain to me your purpose then of encumbering any additional funds?

Ms. Kawahara: To not encumber, yeah, before...

Mr. Kaneshiro: Yeah.

Ms. Kawahara: Mostly because I think it's a stopgap measure, so that we have a stopping point to, as you say, reevaluate what the waste stream is before we even put in our limited resources or moneys into anything else that might, you know, be an option. I again, I know you weren't here, but it did...

Mr. Kaneshiro: So...

Ms. Kawahara: ...come about whether or not there were options.

Mr. Kaneshiro: All right. So let's say we need simply to hire someone to do a real small reevaluation. Under your current amendment, that would prohibit that.

Ms. Kawahara: A reevaluation of the waste diversion program.

Mr. Kaneshiro: Absolutely.

Ms. Kawahara: No, it says...it's specifically connected to waste-to-energy. The encumberment would be specifically as it's stated in the amendment is specifically for waste-to-energy.

Mr. Kaneshiro: Absolutely and that's what I'm saying. Under your amendment, this would prohibit any reevaluation process to happen.

Ms. Kawahara: Of what?

Mr. Kaneshiro: If you read your amendment, that prior to providing any additional funds, before we can reevaluate...

Ms. Kawahara: Uh-huh.

Mr. Kaneshiro: That prior to do any of that, you know, I think this should be left where we could do that so we can reevaluate. What if you need...

Ms. Kawahara: Unless...unless

Mr. Kaneshiro: ...you need to hire someone to reevaluate the process?

Ms. Kawahara: To reevalu...my...I guess my...

Mr. Kaneshiro: Where are you going to get the money from?

Ms. Kawahara: I'm confused because we're talking about...

Mr. Kaneshiro: I'm talking about finance (inaudible), where are we going to get the money from to do that?

Ms. Kawahara: What are you wanting to use the money for? To reevaluate what?

Mr. Kaneshiro: If you want to reevaluate any of this? What about the diversion potential?

Ms. Kawahara: No, that is part, that's part of what's in before we spend any money. The reevaluation comes in before we spend money. Just as...I don't know...because best practice...

Mr. Kaneshiro: Can we have staff please maybe meet with Lani and exp...

Ms. Kawahara: No, no, I...I can read. That's exactly what it says.

Mr. Kaneshiro: All right, well fine.

Ms. Kawahara: The amendment says, before you...

Mr. Kaneshiro: How you interpret that and how I interpret...okay.

Ms. Kawahara: ...look at anything related to waste-to-energy...

Mr. Kaneshiro: Yeah.

Ms. Kawahara: That's when we will say, we would like to have a reevaluation of the waste diversion process and how much is being diverted. There's a total difference between a program...spending a program for waste-to-energy study versus a program to evaluate at five years how much diversion we're going to have.

Mr. Kaneshiro: Well, you know, I feel comfortable...

Ms. Kawahara: So that's my...that's my wonder.

Mr. Kaneshiro: ...thinking about, you know, how we can handle this. You interpret it differently. I interpret it different. Who knows what council we're going to have here then that can interpret it into a strictly different manner that says because there aren't any money appropriated to do any of this, we can't do that. So, I'm real basic. You know I'm thinking in basic terms, I'm just, you know, I'm not a layman.

Ms. Kawahara: Okay, so...

Mr. Kaneshiro: I think we should just call for the vote.

Ms. Kawahara: I...I'm curious. Does everybody under...is everybody under the impression that...that you can't do a study of the waste di...of the diversion of the waste?

Chair Asing: Councilmember, are you through?



Ms. Kawahara: No.

Chair Asing: Go ahead.

Ms. Kawahara: Okay, I want to continue.

Mr. Kawakami: You just asked a question, so.

Chair Asing: Go ahead.

Ms. Kawahara: Forget the question. My understanding is that this is something...we're just trying to say before we move on anything that includes waste-to-energy that we actually assess what has happened in five years with the waste diversion program. It's quite simple. So, my question was exactly that. Why wouldn't we want to stop before we do a big ticket item like waste-to-energy study to evaluate where we are in five years with the waste diversion program? We have business people here and I thought that...I don't know...I would like to be able to know exactly how much we've diverted before we even look at anything else to be able to tell what are the things we can do. I also don't understand this idea that the amendment from last week took away options. So, I...I don't under...I guess...yeah, I don't understand why we need to change it because it's pretty straight forward.

Chair Asing: Thank you, with that, Councilmember Furfaro.

Mr. Furfaro: Yes, thank you. Councilwoman, let me...let me share with you last week's conversation. I had not previously seen that amendment until it was actually passed out, and...the one introduced by Mr. Bynum.

Ms. Kawahara: (Inaudible) you weren't here?

Mr. Furfaro: No, I...that's the first time I saw it.

Ms. Kawahara: Oh, okay, yeah, me too.

Mr. Furfaro: Okay, and Mr. Bynum looked across the table kind of looking for me to second it, and if you recall what I said was I'm not going to second anything I haven't been able to read and digest. After what I saw in that piece, it said we shall not spend and I'm not sure in my mind I'm deviating from what the plan said we should do to maximize diversion, but at the same time, I couldn't agree that I shall support not spending any money going forward. And I'm a pretty smart guy when it comes to money, you know. I...I see the plan as one that really says we've got to do all these things first, okay. And so now, within that time I offer to amend Dickie's and Mr. Bynum's amendment to say should...

Ms. Kawahara: Yes.

Mr. Furfaro: And I agree with should, but I think these two words here, looking at all programs, which, you know, we haven't completed yet with the energy sustainability study we've got in motion at the same time versus what we just have in the solid waste plan. So I like these words, you know, looking at all programs and reevaluating. To me that reevaluating is for...for everything, including...I mean I don't know where the two lines cross diversion and the landfill

getting full quicker than we know. So, I just say I'm more comfortable with this in saying, yeah, this gives us the options to reevaluate the landfill, the programs, the sustainability plan, you know, it's all in there and I guess I would say and I think I said this last week, why would we want to tie our hands with the word shall not. I would think we'd want to leave our options open. That...that's where I'm coming from, Lani.

Ms. Kawahara: Okay.

Chair Asing: Thank you, any further discussion?  
Councilmember Kawakami.

Mr. Kawakami: No and this is good discussion, but you know, for me it was always about keeping the options open, yeah. I mean if anybody recalls, you know, we had an HSAC convention on Kaua'i that we hosted of which we had two companies come in and give us a briefing on the emerging technologies in the waste-to-energy field and solid waste management process that's going through and we had a company called Z-gen that came in and you know, they said that the models are scaling down, they're getting smaller, so it may be one day appropriate for a small community like Kaua'i. You know, after we divert everything, what do we do with the end result? And so it may be appropriate. But the movement, the studies...have to begin now because it takes a long while, you know, to even get these things permitted. I mean, we're all going to be, you know, if we're lucky to get re-elected, we're going to be termed out before any movement happens anyway. We had a company called Z-gen come in, we had a company called Waste Management come in, give a presentation, and based on EPA, Environmental Protection Agency, waste-to-energy in the United States avoids the release of 30 million tons of CO2 per year. So these are all factors in that we should be considering.

You know the other factor, when you look at the big picture, is we have this landfill siting community advisory group that may or may not be instructing the department to go and look into these other technologies including waste-to-energy. And so, you know, what are we going to do? Disregard the advice from a community advisory group? No, we cannot do that, you know.

And I want to go back to the...the title of this plan, the Integrated Solid Waste Management Plan. Integrated means combining or coordinating separate elements so as to provide an integrated whole; to bring together or incorporate parts of a whole and that means that the diligent thing to do is look at all technologies, even technologies that we do not want to look at, and that's where I'm coming from. And you know, whatever the language may be, that's the process.

You know, I don't know, I don't understand where the sentiment comes in that the county is moving towards waste-to-energy when you look at all the programs they've been implementing, and the county has been moving towards diversion. I mean, you look, they just purchased a whole bunch of reusable bags that they handed out to our residents. They had the home composter program to provide free composters for people to divert some of that green waste. We've got a curbside recycling project. And then allocate money for a study and all of a sudden it becomes that the county is moving towards waste-to-energy. You know, to look at it, to look at every technology is the diligent thing to do, okay. So that's where I'm coming from.

Chair Asing: Thank you, with that, Councilmember Chang.

Mr. Chang: Thank you, Chair. I wanted to let Councilmember Kaneshiro know I...you were on business travel last week and you were making reference to Councilmember Kawahara's amendment. I just wanted to let you know when we were in committee last week, Councilmember Kawahara was asked to co-introduce this with Committee Chair Bynum, but, you know, just for the record, Councilmember Kawahara was...is not a member of the Public Works/Elderly Affairs Committee, so I was asked and I did introduce this amendment. So, it was an amendment by request for myself, but I do want to just make mention about the wordings over here since I was the one that introduced it. As we talk about what we want to do or what we want to change, one of the things that we did is we used the word...substituted should versus shall and one of the things that I put in the amendment was should be assessed and we did have a little conversation regarding whether or why are we using reevaluated instead of assessed. But in my understanding I right now see that reevaluated is a better word based on the fact that in my understanding under normal circumstances if something is being assessed, there may be a need to then hire an outside consultant because it's something that needs to be assessed. So, for myself personally, with your amendment I believe that I'm very much more comfortable with the word reevaluated versus assessed. Thank you.

Chair Asing: Thank you, any further discussion. If not, all those in favor of the amendment, say aye.

Mr. Furfaro, Mr. Kawakami, Mr. Chang, Mr. Kaneshiro, Chair Asing: Aye.

Chair Asing: Opposed, say no.

Ms. Kawahara: No.

Chair Asing: One no. Thank you, motion is carried.

The motion to amend Resolution 2009-71, Draft 1, as shown in the Floor Amendment introduced by Mr. Kaneshiro, was then put, and carried by a vote of 5-1-1 (Ms. Kawahara voting no and Mr. Bynum excused).

Chair Asing: With that, can we have the next item please?

(Inaudible.)

Chair Asing: Oh, I'm sorry. We're back to the main motion as amended.

Mr. Furfaro: Move to approve the main motion as amended.

Mr. Chang: Second it.

Chair Asing: Thank you, with that, any discussion please? Yes, go ahead, Councilmember Kawahara.

Ms. Kawahara: I want to thank Councilmember Kaneshiro for his amendment. I personally think that it kind of waters down the amendment that was done previously so that we would have a, you know, a distinct line between making sure that we did our diligence and made sure that everything that needed to be evaluated was evaluated as related to where we will be in five years when we get to five years what the diversion would be. I'm not in...I'm not in agreement that

that amendment took away any options. Like Councilmember Kawakami was saying, all options need to be considered and I agree with that. There's...there are all kinds of studies and new technologies coming around so it may be appropriate at some point to do waste-to-energy just as Mr. Kawakami has said. What I'm...guess...I'm going to come down to is that we have very limited resources and limited funds, as we all know, and I'm just focusing on doing, putting what we need...the money we need into first all the three Rs, learning what our diversion actually is before we step onto a next step. In...in the whole big picture, I don't think we're ignoring any other alternative. I disagree that we're...we're dropping options if we left this the way it was, but obviously the votes going to go that way. I...I've, of course probably I have to, I'm going to approve the whole thing, but it troubles me that...I just...that there doesn't seem to be an understanding that there's just...we would like to have a sure idea of what our diversion is before we put any money into programs or studies and again, it doesn't limit our options. I mean when people go shopping, you know what's out there and you look at what you're going to buy, but it's...the options are still there, but you want to know exactly what you're going to buy first and what you need. So, what we need first is to know how much diversion we are making before we move anywhere else. Thank you.

Chair Asing: Thank you, with that, Councilmember Kaneshiro.

Mr. Kaneshiro: Thank you, Mr. Chair, and thank you members for moving my watered down so-called amendment through, but I believe that if you look at the original amendment, it specifically prohibits waste-to-energy. Because in that language if you look at the language carefully, it specifically states that you need to look at the full, f-u-l-l extent of the county's diversion potential. And no one in their right mind here I guess, you know, I mean no one can even identify what does full potential mean. To me, when you say a cup is full, that means it's 100% full and not half empty, you know, basically. So we're using language like this. We're using that until we prove that 100% of the extent of the county's diversion potential is met, we cannot look at other options as to waste-to-energy. And I believe, you know, if that's what I need to do with a cup of water, water it down a little so we can understand it, then I think this is what I was trying to do, you know, trying to make everyone understand in layman terms the difference between full and the difference to think that we should have some half cup with options. Thank you for that, Mr. Chair.

Chair Asing: Thank you, any further discussion?  
Councilmember Furfaro.

Mr. Furfaro: I...I would...I brought this up last week and I want to reintroduce these comments. These comments deal with my reference to the previous council in our general approval of the \$57 million capital program that when it came to solid waste and in particular the money we allocated there was \$8 million for diversion programs, the landfill siting, and so forth. We made it very clear that the proviso said this did not include any moneys for the energy...waste-to-energy facility, that there was a proviso of \$325,000 that would require the administration to come back to the council. So I just want to point out that still exists, that was introduced in November 4, 2006, it was approved in January. So, there...there is another piece to this that exists and that was Bill No. 2160. Thank you.

Chair Asing: Thank you, any further discussion? If not, roll call.

The motion to adopt Resolution No. 2009-71, Draft 1, as amended was then put, and carried by the following vote:

FOR ADOPTION:	Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1.

Chair Asing: With that, can we have the next item?

Mr. Nakamura: Next matter is a resolution, Resolution No. 2010-18.

Resolution No. 2010-18, RESOLUTION AUTHORIZING THE CREATION OF A RECOVERY ZONE UNDER THE PROVISIONS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FOR THE PURPOSE OF ISSUING RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS; DESIGNATION OF THE LOCAL SUBALLOCATION OF THE VOLUME CAP WITH RESPECT TO THE RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS TO GENERAL OBLIGATION BONDS OF THE COUNTY OF KAUAI: Mr. Furfaro moved to adopt Resolution No. 2010-18, seconded by Mr. Kaneshiro, and carried by the following vote.

FOR ADOPTION:	Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1.

Chair Asing: Next item please.

Mr. Nakamura: Next matters are Bills for First Reading. The first bill for first reading is Bill No. 2346.

#### BILLS FOR FIRST READING:

Bill No. 2346 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 1 KAUAI COUNTY CODE 1987, AS AMENDED RELATING TO THE CODE OF ETHICS: Mr. Furfaro moved for passage of Bill No. 2346 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for the second Council Meeting in March 2010, and that it thereafter be referred to the Committee of the Whole, seconded by Mr. Kaneshiro.

Chair Asing: Any discussion? Yes, I'd like to suspend the rules.

There being no objection, the rules were suspended.

ROLF BIEBER: Thank you, Council, Rolf Bieber. Just quickly, I do support this bill. We put this together while I was on the board of ethics and essentially it's a housekeeping item. The code said that the board was required to have an extra meeting during the year to go over all the disclosure statements and I think it's sufficient what the board of ethics does by...by taking it within each meeting monthly and doing the disclosures that way. So, I do support this and in case I'm not here for the public hearing, I just wanted to give you that information, so, thank you.

Chair Asing: Thank you.

Mr. Furfaro: May I ask a question?

Chair Asing: Yes, go ahead.

Mr. Furfaro: So was it the intent of...to take that spare meeting solely for the purpose of reviewing disclosures from councilmembers, all boards and commission members and so forth, but you would dedicate a certain meeting just to those reviews?

Mr. Bieber: That's correct. The additional meeting would be strictly for disclosure statements.

Mr. Furfaro: Okay, thank you.

Mr. Bieber: Thank you.

Chair Asing: Thank you. Is there anyone else who wants to speak on this item. If not, the meeting is called back to order. We have a motion on the floor. Is there any further discussion? If not, roll call please.

There being no one else wishing to speak on this item, the meeting was called back to order, and proceeded as follows:

The motion for passage of Bill No. 2346 on first reading was then put, and carried by the following vote:

FOR PASSAGE:	Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1.

Chair Asing: Next item please.

Mr. Nakamura: Mr. Chair, with the deferral of item C 2010-25 on page 2, if we could ask for a deferral of this bill also.

Bill No. 2347 – A BILL FOR AN ORDINANCE TO AMEND ORDINANCE NO. B-2009-690, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII FOR THE FISCAL YEAR JULY 1, 2009 THROUGH JUNE 30, 2010 BY REVISING THE OPERATING BUDGET OF THE OFFICE OF THE COUNTY AUDITOR IN THE GENERAL FUND: Mr. Kaneshiro moved to defer Bill No. 2347, seconded by Mr. Furfaro, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Last bill for first reading is Bill No. 2348.

Bill No. 2348 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 19, ARTICLE 3, SECTION 19-3.2 AND SECTION 19-3.3 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PLAYING FEES AND REGULATION OF PLAY AT THE WAILUA GOLF COURSE: Mr. Furfaro moved for passage of Bill No. 2348 on first reading, that it be ordered to print, that a public hearing

thereon be scheduled for the second Council Meeting in March 2010, and that it thereafter be referred to the Parks/Transportation Committee, seconded by Mr. Kaneshiro, and carried by the following vote:

FOR PASSAGE:	Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1.

Chair Asing: Thank you.

Mr. Furfaro: May...may I have a moment just to...privilege here.

Chair Asing: Personal privilege? Go ahead.

Mr. Furfaro: Thank you, Mr. Chair, and I guess we should talk in terms of the second week of March because that is the...that is the month we're moving to our temporary headquarters and that's why the date is kind of a...kind of a moving target. Am I correct?

Chair Asing: Yes, you are.

Mr. Nakamura: Yes.

Mr. Furfaro: Thank you, Mr. Chair.

Chair Asing: Thank you, with that, can we have the next item please.

Mr. Nakamura: Next matter is a Bill for Second Reading, Bill No. 2336, Draft 2.

**BILL FOR SECOND READING:**

Bill No. 2336, Draft 2 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 16, ARTICLE 20, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE TRAFFIC CODE: Mr. Kaneshiro moved for adoption of Bill No. 2336, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Furfaro.

Chair Asing: With that, all those in favor say, aye.

Ms. Kawahara: Wait...wait...

Chair Asing: Before we do that, I'm sorry, we have an amendment, I believe. With that, Councilmember Kawakami.

Mr. Kawakami: I move to approve the amendment as circulated.

Mr. Kaneshiro: I second the motion on that.

Mr. Kawakami moved to amend Bill No. 2336, Draft 2, as shown in the Floor Amendment attached hereto (Attachment No. 2), seconded by Mr. Kaneshiro.

Chair Asing: Okay, any discussion, we're on the amendment as circulated. Is there any discussion on the amendment?

Ms. Kawahara: Can I get a...5-minute...to read it through, please, recess? Thank you.

Chair Asing: We'll have a short recess and then we'll have the public up first.

There being no objection, the Chair recessed the meeting at 11:32 a.m. The meeting reconvened at 11:44 a.m., and proceeded as follows:

Chair Asing: The meeting is now called back to order. With that, Lani, do you have a question?

Ms. Kawahara: Thank you, Council Chair Asing. I appreciated the break. I guess, mister, Councilmember Kawakami is going to tell us a little bit about the amendment, yeah?

Mr. Kawakami: Sure.

Chair Asing: With that, Councilmember Kawakami.

Mr. Kawakami: Okay, so I'll give you just a brief history on why this has come full circle. We originally, yeah, the original bill before we even had it on the floor had the language that the use of a two-way radio while in the performance and scope of work-related duties shall also be an affirmative defense to this ordinance, and that was removed before this bill even hit the floor. And the reason why it was removed is because the City & County of Honolulu was facing challenges from drivers that were using push-to-talk technology and claiming that it was a two-way radio, and that they were at work. So they were circumventing the law with these devices and claiming that it was a two-way radio and since then we've done things like exempt CDL drivers. We had a meeting with the police department and the trucking companies so they could explain exactly what two-way radios entail. And the basic thing is that, you know, two-way radios are work related and majority of the communication comes from dispatch from the land base out to the driver giving them instructions and it's not necessarily the driver talking story or even communicating back. Most of it is coming from dispatch out, so the driver is still focused. They're just getting instructions saying, hey, instead of Anahola, you're going down to Hanapepe now, and so that is why we came to a consensus with the commercial truck drivers.

Since then we've done some research on the whole push-to-talk technology and based on commercial mobile radio services defined by Title 47 of the Code of Federal Regulations Part 20, push-to-talk technology does not constitute a two-way radio, so the argument would be, as it seems, moot if somebody would try to argue this in the courts. So that being said, the bulk is to add in the use of a two-way radio under performance and scope of work-related duties shall also be an affirmative defense to this ordinance, okay. Anybody have questions on that?

Ms. Kawahara: Thank you for the work on...

Chair Asing: Go ahead.



Ms. Kawahara: Thank you, Councilmember Kawakami, for the work on the bill and getting all the questions answered.

Mr. Furfaro: Let's vote on the amendment.

Chair Asing: Okay, with that, we have the amendment on the floor now. All those in favor of the amendment, say aye.

The motion to amend Bill No. 2336 was then put, and unanimously carried.

Chair Asing: We're back to the main bill as amended. Any discussion? If not, roll call please. Oh, I'm sorry, the rules are suspended. My apologies, Mr. Taylor.

There being no objection, the rules were suspended.

KEN TAYLOR: Chair and members of the council, my name is Ken Taylor. For the most part, I think this is a great bill and needs to be adopted, but as I've said in the past, under Section 16-20 item (b) the use of mobile electronic devices for the sole purpose of making a 911 emergency communication shall be an affirmative defense for this ordinance. Again I'll say that when there's...when there's a problem at hand that requires a 911 call, in most cases driving the roadway it would be an automobile accident. I don't think that is the time that a person should be worrying about doing something other than driving and...in the few minutes it would take to pull off to the side of the road in order to make that 911 call in a safe manner certainly makes more sense. I mean I see people all the time when...in...during emergency activities they get shook up, they...their...they don't have their faculties all together, and this is not the time or...or the...an item that should be exempt. It just should not be. And...I...otherwise, I have no problem with the bill, but I think that should be eliminated. Thank you.

Chair Asing: Thank you. Is there anyone else? If not, I'd like to call the meeting back to order. We have a motion on the floor. With that, the motion is to amend and do we have any further discussion?

There being no one else wishing to speak on this item, the meeting was called back to order, and proceeded as follows:

Ms. Kawahara: We did the amendment.

Chair Asing: We completed the amendment, yeah. We're back to the main motion as amended. My apologies. Okay, with that, any further discussion.

Mr. Chang: Yes.

Chair Asing: Go ahead, Councilmember Chang.

Mr. Chang: Thank you, Chair. I want to show my support for this bill and we had a lot of testimony from many people out there that sent their testimony in regards to various other states that banned the bill that there was no evidence that it stopped people from having accidents and there was no, I guess, scientific proof or no...no history that the banning of the cell bill would prevent any sort of accidents itself. You know when looking at this bill, it was a bill that the

police department requested getting on the agenda to our Public Safety Chair Kawakami and I would have to say that being on the road and using the phone quite a bit, you know, people on Kaua'i realize that if there's any sort of accident, heaven forbid it's a minor accident, heaven forbid if it's a serious injury or perhaps even a fatality, whether you got one accident or not, here on Kaua'i, it... the minimal is you're going to tie up and tangle road and traffic in any given part of the day for hours and hours and hours and hours and if a little thing like using the cell phone or texting the phone or whatever you're doing to be distracted can be prevented, I am all in favor for this safety. And for those that are out there that may not agree with this particular bill, I would have to say on a personal note I do use the phone a lot and the phone is my...pretty much my...my mode of business and also entertainment. I like to talk and I like to, you know, do business while we're doing that, but I think it's a very, very good bill and I'm willing to go without the phone.

Just as a reminder, we did meet with Captain Scribner and Chief Perry as well as Stephen Giraldo and Ron Victorino, and Mr. Giraldo and Victorino assured us that every 90 to 120 days, the...many of these truckers have to go to class. So they're very, very safety oriented and they did reassure us that many of the truckers if they do need to use...call the phone, will use the phone while they're, you know, parked and ready to get out to their next destination so that they can at least give an ETA.

But I do want to remind the public whether they're truckers or private citizens that we all need to safely pull on the side of the road and your ignition cannot be running. Your car has to be turned off and the key needs to be out of the ignition just for safety purposes. And I think what we all need to do is as much as we can, please abide by this law because it's hard enough for the police officers to detect any use of the phone, but it's, you know, certainly hard enough to ticket because a lot of people will maybe perhaps protest the ticket. But the bottom line is that this is coming as a request from our police department and safety is the key issue right now and if we can alleviate any minor or major or perhaps any sort of fatal accident, I'm all for it. So I'll be supporting the ban of our cell bill. Thank you.

Chair Asing: Thank you, any further discussion? Yes, go ahead,  
Councilmember Kawakami.

Mr. Kawakami: You know, it's just to...just make a small clarification. This...this never came over as request from the police department. I went and told them that I was going to introduce the bill, so small clarification.

Chair Asing: Thank you.

Mr. Kawakami: And, you know, we didn't reference it, yeah, but...just so people getting the right information, hands-free devices, although they're not a proven safer alternative are still, under the definition of this ordinance, allowed. So a couple clarifications on that last statement.

Chair Asing: Thank you, any further discussion? If not, roll call please.

The motion for adoption of Bill No. 2336, Draft 2, as amended was then put, and carried by the following vote:

FOR ADOPTION:	Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1.

Chair Asing: Thank you, with that, can we have the county attorney up, please?

There being no objection, the rules were suspended.

ALFRED B. CASTILLO, JR, County Attorney: Good morning, everyone, Al Castillo, County Attorney. I'm looking for guidance here. Do you want me to read all of these?

Chair Asing: Yes, why don't we do that, please.

Mr. Castillo: Okay, thank you. In reference to executive session ES-420, 421, and 422:

ES-420 Pursuant to Haw.Rev.Stat. §§92-4 and 92-5(a)(4), (6) and (8), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide the Council a briefing on Krstafer W. Pinkerton v. County of Kaua'i, Kaua'i Prosecutors Office, et al., Civ. No. 08-00222 HG/KSC (U.S. District Court, District of Hawai'i) and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-421 Pursuant to Haw.Rev.Stat. §§92-4 and 92-5(a)(4), (6) and (8), and Kauai County Charter section 3.07(E), the purpose of this executive session is to provide the Council a briefing on Kaua'i Springs, Inc. v. County of Kaua'i, et al., Civ. No. 07-1-0182 and Kaua'i Springs, Inc. v. Planning Commission of the County of Kaua'i, Civ. No. 07-1-0042 and associated matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-422 Pursuant to Haw.Rev.Stat. §§92-4 and 92-5(a)(4) and (8), and Kaua'i County Charter section 3.07(E), the Office of the County Attorney requests an executive session with the Council to provide the Council a briefing, update, and to request authority relating to the case of Jane Doe v. County of Kaua'i, EEOC Charge no. 486-2009-00268 and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Asing: Thank you, with that, before I call the meeting back to order and have a motion, what I'd like to do is open it up to the public. Is there anyone in the public who wants to speak on these items? If not, I'll call the meeting back to order and have a motion, councilmembers, to move into executive session.

There being no one wishing to speak on these items, the meeting was called back to order and proceeded as follows:

Mr. Furfaro moved to convene in executive session, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Thank you, we're going to move into executive session.

There being no objection, the Chair recessed the meeting at 11:58 a.m. The meeting reconvened at 3:41 p.m., and proceeded as follows:

Chair Asing: This council meeting is now called back to order. With that, we have one more item on the agenda and that's on page 3, item 2010-33. Mr. Clerk, could you please read the item.

RICKY WATANABE: C 2010-33.

COMMUNICATION:

C 2010-33 Request (01/22/2010) from the Office of the County Attorney for authorization to expend up to \$50,000 for special counsel's continued representation in Kaua'i Springs, Inc. v. County of Kaua'i, et al., Civ. No. 07-1-0182 and Kaua'i Springs, Inc. v. Planning Commission of the County of Kaua'i, Civ. No. 07-1-0042 and related matters.

Chair Asing: Thank you, can I have a motion to approve?

Mr. Chang moved to approve C 2010-33, seconded by Mr. Kaneshiro, and unanimously carried.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 3:43 p.m.

Respectfully submitted,



PETER A. NAKAMURA  
County Clerk

/wa

February 3, 2010

**FLOOR AMENDMENT**

Resolution No. 2009-71, Draft 1, Relating to Adopting the Integrated Solid Waste Management Plan Update for The County of Kaua'i

Introduced by: Daryl Kaneshiro

Amend Resolution No. 2009-71 by amending the 11<sup>th</sup> paragraph to read as follows:

“BE IT FURTHER RESOLVED, that prior to [encumbering any additional funds or] implementing [any actions] programs relating to [Waste to Energy the full extent of] waste-to-energy the County's diversion potential or impact to the landfill capacity should be [assessed] reevaluated.”

(Material to be deleted is bracketed. New material to be added is underscored.)

February 3, 2010  
FLOOR AMENDMENT

BILL NO. 2336, Draft 2, Relating to Mobile Electronic Devices

Introduced by: Derek S. K. Kawakami

Amend Section 1 to read as follows:

“SECTION 1. Chapter 16, Article 20, Kaua'i County Code 1987 is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 16-20. \_\_ Use of Mobile Electronic Devices While Operating a Vehicle.

(a) No person shall operate a motor vehicle while using a mobile electronic device.

(b) The use of a mobile electronic device for the sole purpose of making a “911” emergency communication shall be an affirmative defense to this ordinance.

(c) The use of a two-way radio while in the performance and scope of work-related duties shall also be an affirmative defense to this ordinance.

(d) The following persons shall be exempt from the provisions of subsection (a):

(1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties; and

(2) Drivers possessing a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio.

(e) As used in this section:

“Emergency responders” include fire fighters, emergency medical service technicians, mobile intensive care technicians, civil defense workers, police officers, and federal and state law enforcement officers.

“Mobile electronic device” means any hand-held or other portable electronic equipment capable of providing wireless and/or data communication between two or more persons or of providing amusement, including but not limited to a cellular phone from a Commercial Mobile Radio Service as defined by Title 47 of the Code of Federal Regulations, Part 20,

text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, but does not include any audio equipment or any equipment installed in a motor vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle, or video entertainment to the passengers in the rear seats of the motor vehicle.

“Operate a motor vehicle” means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway.

“Two-way radio” means a Private Land Mobile Radio System as defined by Title 47 of the Code of Federal Regulations, Part 90.

“Use or using” means holding a mobile electronic device while operating a motor vehicle.

(f) Any person convicted or found liable of violating any provisions of this section shall be subject to a maximum fine of fifty dollars (\$50).

(g) Any person convicted or found liable of violating any provisions of this section while operating a motor vehicle in a school zone or construction area as defined in HRS Section 291C-104 shall be subject to a maximum fine of one hundred dollars (\$100).”

(All material is new.)

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